

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOE HOLCOMBE, ET AL, .
PLAINTIFFS, .
vs. . DOCKET NO. 5:18-CV-555-XR
UNITED STATES OF AMERICA, .
DEFENDANT. .

TRANSCRIPT OF PRETRIAL PROCEEDINGS
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE
MARCH 25, 2021

APPEARANCES:
FOR THE PLAINTIFFS: JAMAL K. ALSAFFAR, ESQUIRE
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REPORTED BY: GIGI SIMCOX, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
SAN ANTONIO, TEXAS

1 (San Antonio, Texas; March 25, 2021, via Zoom
2 videoconference.)

3 THE COURT: Good afternoon, everyone. Let's call 18
4 civil 555, Joe Holcombe and others versus the United States.

5 Who do we have for the plaintiffs' group?

6 MR. ALSAFFAR: Jamal Alsaffar for the plaintiffs.
7 Good afternoon, Judge.

8 THE COURT: Afternoon. Thank you.

9 And who do we have for the government?

10 MR. STERN: Good afternoon, Your Honor. On behalf of
11 the United States, Paul Stern.

12 THE COURT: Thank you.

13 So we're here for a final pretrial conference. I
14 guess the first thing I want to take up is exhibits. So
15 tomorrow is the deadline for the parties to present to us all
16 the exhibits that are not objected to. Are we on target to do
17 that?

18 Let's start with the plaintiffs.

19 MR. ALSAFFAR: Yes, Your Honor, we are. We're very
20 close actually, but we're definitely on target and we'll
21 definitely have it filed tomorrow.

22 THE COURT: Agreement from the government on that, or
23 do we have an issue?

24 MR. STERN: There is agreement, Your Honor.

25 I think we are largely in agreement so we will be

1 able to provide a list tomorrow of both joint exhibits and I
2 believe each party's exhibits that will be objected to by the
3 other side.

4 So I don't know how the Court intends to address
5 those objected to exhibits, whether it will be the first day
6 of trial or have another pretrial conference. Obviously I'll
7 defer to the Court on that issue.

8 THE COURT: Yeah. So the way I was going to handle
9 that is the very first day of trial I was going to admit
10 everything that was not objected to. And then as to exhibits
11 that have an objection, I'll make a ruling at the time the
12 party tenders the exhibit for admission. I'll hear the
13 objection and I'll make a ruling.

14 Anybody, questions on that?

15 MR. ALSAFFAR: Not from plaintiffs, Your Honor.

16 THE COURT: Great.

17 Does that help, Mr. Stern?

18 MR. STERN: It does. Thank you, sir.

19 THE COURT: With regard -- well, let's talk about the
20 trial date now. I think everyone is aware now we'll start on
21 April 7th. I think I have the date right.

22 MR. ALSAFFAR: Yes.

23 THE COURT: And so what I'm hoping for is that at
24 least -- so April 7th is a Wednesday. I'm hoping that at
25 least by the 5th the plaintiffs tender to the government the

1 trial order of the witnesses in the event that the list has
2 been altered in some way from how it's been presented in the
3 pretrial order, so that the government will be prepared to
4 know which witnesses will be testifying first, second, third.

5 And then, conversely, when it's time for the
6 government's case in chief, I'll expect that the government
7 tender to the plaintiffs their recent order so everything
8 moves along slowly.

9 With regard to witnesses, anybody expecting anything
10 unusual? And the reason I bring it up is so one of my
11 colleagues has got a bench trial right now, a Federal Tort
12 Claims Act case, and one of the plaintiff's witnesses, who by
13 the way is a medical doctor, refuses to wear a mask. And so
14 he was, of course, then denied entry into the building, and so
15 we have drama.

16 So of course, we don't want any drama in this case.
17 Do I expect any drama? Anything we need to be given a
18 heads-up on, from the plaintiffs, Mr. Alsaffar?

19 MR. ALSAFFAR: I sure hope not. I haven't
20 encountered any in terms of the witnesses that are supposed to
21 be live, and there doesn't seem to be any issue related to
22 that.

23 You know, of course, if we get some clarity, a little
24 more clarity on what the Court's expectations are in terms of
25 the mask wearing, we'll relay that, but we've already sort of

1 proactively done that and there doesn't seem to be an issue.

2 And in terms of the order of witnesses, well, we've
3 actually already talked to the government and given them what
4 our order is going to be, and if anything changes we'll follow
5 up with them as well prior to April 5th to confirm that.

6 But we're trying to make this as orderly as possible
7 and think ahead on those issues. So far I don't think there
8 should be any.

9 THE COURT: You asked about expectations, so here's
10 the expectations. The expectations are that, one, we were
11 complying with the mandate from President Biden that this is a
12 federal facility and so anyone entering a federal facility is
13 required to wear a mask. So we expect compliance with that.

14 We expect people to be considerate of everyone. So
15 if someone is running a fever or otherwise ill, we expect that
16 they do not enter the building and ask to be excused. We
17 don't want anybody coming into the building who is obviously
18 ill and knowingly ill.

19 The third thing is we expect people to be wearing
20 their mask, when they enter the building, come into the
21 courtroom. They can take off their mask while they are
22 testifying, but, otherwise, they are to wear a mask.

23 So those are the expectations that I will enforce.

24 So each judge, you know, has to run things on their
25 own. I was giving my advice to my colleague on how to handle

1 his situation.

2 I basically told him, hey, it's the plaintiff's
3 witness, if the plaintiff's witness doesn't want to abide by
4 the rules, that's the plaintiff's problem and I would just
5 call for the next witness.

6 So that applies both to your group and the
7 government's group as how I would handle it, so there we are.

8 MR. ALSAFFAR: I have a quick question on, just since
9 we're on masks, and you mentioned that when the in-person
10 witness is there and testifying they can remove the mask, as
11 far as the attorneys, what are your expectations when we're
12 doing the examination? Do we keep our masks on? Is it okay
13 if we take them off when we're examining?

14 THE COURT: Yeah. So you'll be at counsel table.
15 Usually you would come to the lecturn. To avoid having a
16 shared lecturn space, we're just going to have you-all
17 speaking and presenting from your own counsel tables.

18 If you want to take off your mask at that point,
19 there is enough distance to allow for all of that. And so
20 while speaking, you can take the mask off, but otherwise you
21 ought to try to keep it on as much as possible.

22 Do we have anything else to talk about in terms of
23 either witnesses or exhibits?

24 MR. ALSAFFAR: No, Your Honor. I have a few more
25 questions just about the mechanics, housekeeping-type matters,

1 but I can address those whenever you're ready.

2 THE COURT: Yeah. So let's stick to exhibits and
3 witnesses.

4 Mr. Stern, anything else?

5 MR. STERN: Thank you, Your Honor.

6 In keeping with not wanting to surprise the Court, I
7 do think we should discuss the breadth of the exhibits that we
8 sort of anticipate producing for the Court, and I want to make
9 sure that we're all on the same page in the mechanics of how
10 we are providing to Your Honor.

11 So in phase one of the trial, sort of to speak, the
12 deposition designations that we provided the Court with the
13 exhibits that it would need in order to read those deposition
14 designations, there were about 133 exhibits.

15 All tolled right now between plaintiffs and United
16 States, sort of thinking joint exhibit list, we're looking at
17 close to over a thousand exhibits; theory being that Air Force
18 has a tremendous amount of information, case files and
19 investigative files, the Texas Ranger file is very large.

20 And so to the extent that it's really not practical
21 to provide the Court with hard copies of all exhibits, the
22 United States would intend to provide on the first day a hard
23 drive of all exhibits, and then physical copies of those
24 exhibits that we intend to use with the witnesses during the
25 phase two portion of trial.

1 Is that sufficient, Your Honor?

2 THE COURT: So you talk about phase two portion of
3 trial. I mean, that would be sufficient for me for both
4 phases, this liability phase and the damage phase, frankly.

5 MR. STERN: I'm sorry, Your Honor. Forgive me.

6 I'm not being clear. I guess I was thinking of phase
7 one as the deposition designations where we have provided Your
8 Honor with testimony through transcripts, written or video.

9 THE COURT: Right.

10 MR. STERN: And we also provided a whole slew of,
11 let's say, 133 exhibits already.

12 Now in this sort of second phase of the live phase of
13 the trial, there is going to be a thousand more exhibits, and
14 that's a tremendous amount of paper. We didn't want to flood
15 Your Honor with all the hard copies.

16 It's the way we envisioned, again, for just the next
17 portion of the liability phase. Maybe that's the better way
18 of saying it. We were going to provide a hard drive of the
19 grand universe of those exhibits, and then hard copies of
20 those we intend to use with witnesses.

21 THE COURT: I've got you now. I follow you now.
22 Yes. No, that's perfectly fine.

23 MR. STERN: Okay. And then just to continue that
24 theme, forgive me, I haven't tried a case in this jurisdiction
25 yet, so maybe I have some more fundamental questions, but is

1 it permissible to have a binder for witnesses where we provide
2 the hard copies of exhibits that we intend to use for those
3 witnesses?

4 THE COURT: Yes, that's fine.

5 MR. STERN: And then would Your Honor like a copy of
6 that binder as well, or is the sort of the binder that we're
7 going to provide on the first day that provides all of the
8 exhibits that we're going to use for all the witnesses, will
9 that suffice?

10 THE COURT: So you know, maybe I can answer it this
11 way. Do not provide me binders of all exhibits because I
12 certainly don't want to see physical hard copy of a thousand
13 exhibits.

14 So if you want to provide me what you're going to be
15 providing the witnesses, that would be helpful, and then maybe
16 some other select exhibits that you think would be helpful for
17 me to have hard copy of, but so I'm not -- I think I'm
18 answering your question by answering it differently.

19 MR. STERN: But you are, and of course we'll publish
20 them on the screen during the trial as well. I just want to
21 make sure if you wanted hard copies what we were -- that we
22 were being responsive to that request.

23 THE COURT: Yeah. No. And that helps me when I have
24 to take it back and when I'm thinking about this, so that
25 would be helpful.

1 MR. STERN: Thank you, sir.

2 THE COURT: So have we now covered exhibits and
3 witnesses?

4 MR. STERN: I believe so.

5 THE COURT: It looks like we have.

6 So Mr. Alsaffar, you had some other matters?

7 MR. ALSAFFAR: Yes. Just a couple questions that we
8 had regarding sort of the courtroom set-up, and our staff has
9 been working with your staff who has been very helpful in just
10 trying to make it as smooth as possible. So I just had a
11 couple of questions and you answered one of them in terms of
12 the witnesses and the masks.

13 In terms of the microphones and the audio, so we had
14 a few questions about that. My understanding is that when the
15 witnesses are going to be brought in via Zoom that we're going
16 to be using the Court — there is going to be some, I guess,
17 portable mikes that are going to ensure that both the witness
18 on Zoom, and the folks who are watching it over Zoom can hear
19 adequately.

20 We just wanted to make sure that the mikes were
21 placed in the right areas, and if we needed a couple of extras
22 that the courtroom was going to be prepared to place those
23 portable mikes in the right areas so that the audio is working
24 fine.

25 THE COURT: What I would suggest to you,

1 Mr. Alsaffar, is you bring in your technical crew to a date
2 that the courtroom is going to be available for you to test.

3 I would bring in the extra mikes that you think might
4 be necessary, whatever laptop you would hook up to the podium,
5 and just do a -- I would have somebody back in your office to
6 do the Zoom test. I would do a trial run, if I was you.

7 MR. ALSAFFAR: We are. We are going to do that and
8 we've already communicated and working on that set-up and we
9 know that Judge Pulliam is trying a case in his courtroom
10 right now, so we've sort of scoped that out as well and are
11 working with your staff. And I know we have to wait until
12 they are done with their trial so we can set that up, so we're
13 definitely going to do that.

14 THE COURT: If he has more plaintiff witnesses who
15 don't wear masks, maybe it will be expedited.

16 MR. ALSAFFAR: Yes. Well, I'm glad we got so much
17 into the depositions, but we'll do our best to make sure
18 that's not an issue and I don't think it will be.

19 In terms of those witnesses that are coming in to
20 testify, you know, these fact witnesses that are coming in to
21 testify live in person, obviously these are not all our
22 witnesses in the sense that they are not employees of ours,
23 they are fact witnesses, but we are bringing them in our case
24 in chief and coordinating with them.

25 Is there a place that you're going want them to wait,

1 or is it just the normal, wear a mask, be spacing, stand
2 outside the courtroom and just wait until —

3 THE COURT: Yeah. So yeah, it will be just like, in
4 that respect, the same as any other court proceeding. They
5 are wearing a mask. They are outside the rotunda area. The
6 third floor has got a little bay where they can sit, social
7 distance, and just wait to be called.

8 MR. ALSAFFAR: Okay. Thank you, Your Honor.

9 And the tech person that's going to be running the
10 tech for the courtroom, would it be permissible for our tech
11 folks to have that person's direct number, so that if any
12 issues arise or any questions we have either before or during
13 the trial, we can have a direct line to them as well?

14 THE COURT: Yeah. So his first name is Daniel.

15 Sylvia, help me out with Daniel's last name. Is it
16 Olson?

17 THE DEPUTY CLERK: Yes, Judge. It's Olson.

18 THE COURT: Yeah. And so you can contact
19 Miss Fernandez and you can get his work phone number to
20 contact.

21 And this goes for both the government and the
22 plaintiffs' group. Contact with the technical person is fine
23 with me.

24 MR. STERN: Thank you, Your Honor.

25 In fact, the government was going to ask one step

1 further. One of our issues in preparation is the United
2 States can't initiate Zoom conference calls, so it's hard to
3 sort of prepare our witnesses accordingly.

4 I'm wondering if it's possible to sort of do a dry
5 run with Mr. Olson where he can initiate it from Your Honor's
6 courtroom, and then obviously we won't physically be there but
7 our witnesses who will appear via Zoom will have that sense of
8 how this is going to play out.

9 THE COURT: Yeah. So again, our courtroom deputy,
10 Miss Fernandez, is actually -- so Daniel will not be at the
11 trial. Daniel is -- we've got a limited IT staff, so Daniel
12 is spread around the whole district. So he's our point person
13 but I can't guarantee that Daniel is going to be physically in
14 San Antonio.

15 So Miss Fernandez is going to be running the show
16 while in trial, but both sides have equal access to
17 Miss Fernandez or Mr. Olson, as long as you aren't talking
18 about the substance of this case and just technical issues.

19 MR. STERN: Of course. Thank you, sir.

20 MR. ALSAFFAR: On the question of -- this has to do
21 with the feed that is going to be provided to the public or to
22 other attorneys or the families to watch the trial, does Your
23 Honor have any guidance on what that's going to -- I have a
24 couple questions related to that, and of course one of them is
25 how is that going to be done or operated?

1 THE COURT: Yeah. So Miss Fernandez, you jump in if
2 I need to be corrected, but we're going to be running off the
3 zoom.gov platform, and we have a limited account here at the
4 court for just a couple of licenses and we will use one of
5 those licenses that provides the capability of using the Zoom
6 platform for more than the customary 100 or so participants.

7 So in the event, in the probably likely event that
8 we're going to have 100 or more people between the plaintiffs
9 and others and the lawyers, so this license will provide us, I
10 believe, up to 500 folks to watch the proceedings.

11 So this is all being run through the Zoom platform.
12 And so if you want your plaintiffs to be able to watch, your
13 fellow attorney groups, all we need to do is have the
14 individual's name and email address contacts be given to
15 Miss Fernandez and Miss Fernandez will give you the usual
16 invites, just like we do for these hearings.

17 MR. ALSAFFAR: That was going to be my follow-up. So
18 we can give Miss Fernandez the contact information of who
19 needs to get the link and she'll take care of it from there?

20 THE COURT: Yeah. She'll take it from there.

21 And likewise for the government.

22 MR. ALSAFFAR: Okay. Sorry, Paul -- did you have --
23 I didn't mean to interrupt you.

24 MR. STERN: No. No. No. I have questions, but
25 continue.

1 MR. ALSAFFAR: Oh, okay. My next question was --
2 also it may be one that we should talk to Daniel or
3 Miss Fernandez about in terms of the technical.

4 I'm thinking of the live witness, the in-person live
5 witness testifying and how the folks who are not in the court
6 are going to be able to see them. Will they have a camera or
7 can we bring an extra webcam and set it up for the Court, so
8 that the witness who is either on the stand or in the jury
9 box, so the person who is actually live in-person can also be
10 seen?

11 THE COURT: Seen on Zoom, right?

12 MR. ALSAFFAR: Yes.

13 THE COURT: So I'm pretty sure I know the answer to
14 this, that we are going to have a cam set up on them, but you
15 raise an interesting point. You know, so this is the
16 government, and so the quality of the equipment is always an
17 issue.

18 I mean, if you think you have a better camera that
19 you would rather have used, you may want to contemplate
20 talking to Daniel and seeing what camera we're using and what
21 the quality of your camera is. I'm not opposed to either side
22 bringing in additional equipment, if it helps improve the
23 quality.

24 MR. ALSAFFAR: That was my question, Your Honor. We
25 want to make sure it was okay just to do that, and we're more

1 than happy to work with Daniel and Miss Fernandez on
2 coordinating that, to bring our own equipment to make sure
3 that even if it's just as a back-up, I mean, and we'll -- I
4 just want to make sure we had your permission to do that.

5 THE COURT: Yeah. No, that's fine.

6 MR. ALSAFFAR: Okay. And this may seem -- normally I
7 don't ask questions about Elmos, but because the -- we're
8 trying to make sure that everyone can see everything, if one
9 of our attorneys wants to use an Elmo to display, is that
10 going to be something that we can be able to do, or is that
11 something we need to think ahead of and work around?

12 THE COURT: So this one, I'm less sure of my answer.

13 Of course, in the courtroom we have an Elmo. You'll
14 be able to present on the screen. The question I have is
15 what's appearing on the screen, how will that be shown on
16 Zoom, and do we have a camera aimed at the screen and the
17 quality of that. All of that, I am unsure of.

18 MR. ALSAFFAR: Okay. Again, I'm more than happy --
19 these are the types of questions I have about evidence
20 presentation in this format. As long as it's okay with me to
21 discuss those options and have camera options and we can
22 coordinate with your staff and the tech in the courthouse to
23 make that. I just didn't want to bring equipment or cameras
24 and not have that been approved, preapproved and all of that.

25 THE COURT: No, you're welcome to it.

1 MR. ALSAFFAR: Okay. Thank you.

2 I think that's all I have on that end.

3 THE COURT: Mr. Stern.

4 MR. STERN: Yes. As long as we're on the topic of
5 Zoom witnesses, I think I have two questions.

6 The first, when it comes to publishing exhibits
7 through Zoom, would it make sense for the witness who is
8 appearing via Zoom to also have a hard copy? Obviously, they
9 won't be able to look at it until it's published to them, but
10 for our experts, sort of speak, will they have a set of
11 exhibits that they can look at simultaneously so that way
12 through Zoom we can look at their faces rather than the actual
13 documents?

14 THE COURT: So let me see if I can break this up.

15 If you're going to question a witness who is
16 appearing by Zoom, how will they be able to see an exhibit
17 that you are referring to? I think you're going to need to
18 provide them in advance whatever exhibits you think you might
19 be presenting to them.

20 And so it's going to be incumbent upon you, both
21 sides, for your respective witnesses if you think you're going
22 to show them exhibits, provide them in advance to them by
23 email or otherwise. And so that's one.

24 Two, if we're doing this for purposes of
25 authenticating exhibits, you know, if these are already agreed

1 to, we don't have to worry about authentication. If this is
2 going to be an objected to exhibit that you're going to need
3 to prove up by a witness to overcome any objections that may
4 be currently being asserted, yeah, you're definitely going to
5 need to have that exhibit before that witness.

6 MR. STERN: Certainly. And I think we're going to
7 hopefully be able to avoid a lot of authentication objection
8 arguments on these documents. I think Mr. Alsaffar and I are
9 largely in agreement about the list.

10 Mr. Alsaffar can correct me if I'm wrong.

11 MR. ALSAFFAR: That's correct.

12 MR. STERN: So really it was more about a
13 belt-and-suspenders approach that I was suggesting, just as if
14 we're going to have binders for the live in-person witness, we
15 would anticipatorily provide a binder to the individual who
16 will be appearing via Zoom, so that way they can sort of look
17 at the exhibit simultaneously, look at a physical copy
18 simultaneously, even if we publish it in the courthouse.

19 THE COURT: Yeah. So you know, that works well for
20 your own witnesses. What becomes a little more problematic is
21 for witnesses on the other side, any exhibits you might want
22 to show them.

23 You know, at this point, there shouldn't be any
24 surprises at least to the lawyers. I don't know from an
25 attorney standpoint whether you want to already give a

1 heads-up to the witnesses or not. I leave that to you.

2 But it may be beneficial and something you ought to
3 consider, both sides, telling the other side, hey, your
4 witness perhaps should have in front of them Exhibit 13,
5 Exhibit 27, so forth.

6 You may want to consider that.

7 MR. STERN: I'll certainly meet with Mr. Alsaffar
8 after this and I think we can get together on that issue.

9 MR. ALSAFFAR: Yes.

10 MR. STERN: And then the only other thing when it
11 comes to Zoom witnesses, I think I'm stating the obvious, but
12 there has to be some mechanism to ensure that witnesses can't
13 watch one another testify obviously. We would invoke the
14 rule.

15 THE COURT: So we have the ability, both me and
16 Miss Fernandez have the ability to control who is able to come
17 in. And now that raises a pretty good point. How do we
18 monitor who is coming in?

19 First of all, while you-all do your last minute prep
20 with the witnesses, I think you will really need to consider
21 talking to them about the rule, the rule being invoked, how
22 they can't watch these proceedings until they are called to
23 testify.

24 And then for witnesses who will be appearing by Zoom,
25 I think in many ways it's going to be incumbent upon you-all

1 because I can't be staring at a screen with a hundred names,
2 but telling them that you're going to email them or text them
3 in advance when they should ask to come in and then we will
4 admit them.

5 That's sort of one way I can sort of tell whether
6 they've already been in the proceedings, because if I'm not
7 seeing them requesting to be admitted, then I'm wondering,
8 hey, how long have they been in this place. So that will be
9 one measure of control I can have.

10 That's not -- the only way I can guarantee you,
11 though. This is not like a physical courtroom where I can
12 tell somebody walked in.

13 MR. STERN: And I raise this just as a note of
14 caution, not that I'm overly concerned about it.

15 In fact, I think the way that we've broken this down
16 between in-person live, and live via Zoom, it's sort of the
17 experts that are going to be appearing via Zoom, so I think
18 there is less of a concern on that front. I just wanted to
19 put that out there to ensure that however the best way we can
20 approach this, we do so, because we would invoke the rule
21 obviously.

22 THE COURT: Understood.

23 MR. STERN: Thank you.

24 MR. ALSAFFAR: I was only going to add that I think
25 all of the remote witnesses are retained expert witnesses and

1 so I don't think -- luckily, and at least in this phase of the
2 trial, I don't think that's really much of an issue. And in
3 terms of in-person witnesses, we will instruct personally the
4 live in-person witnesses who may be going on day two or three
5 not to come in.

6 And what I was thinking, Your Honor, if it's helpful
7 to you, I mean, that's a very small universe. That's only a
8 few people. We could notify your staff or Miss Fernandez,
9 whoever is running that, these are the people so you will know
10 when they ask that that's not somebody who is allowed to come
11 in.

12 THE COURT: Yeah. I'm reminded too that, you know,
13 to the extent you want to show your witnesses an exhibit,
14 we'll provide each of you-all -- well, Mr. Alsaffar and
15 Mr. Stern, the ability to share screen. So you'll be able to
16 show exhibits that way, and that exhibit will be shown
17 throughout the whole Zoom proceedings and so everyone will be
18 able to capture it that way.

19 MR. ALSAFFAR: I had one other question, Your Honor,
20 just to put a -- close that loop, because I think you've
21 already answered it and I think we've addressed it in a prior
22 hearing, but it had to do with whether or not there would be
23 broadcasting to other courtrooms during -- in other words,
24 would there be other courtrooms set aside during this trial
25 for folks to go into and watch?

1 And I think your answer to that was no before and we
2 weren't necessarily requesting that either, but I just wanted
3 to make sure that's still the case, or if there is a change in
4 that.

5 THE COURT: So my preference would still be just to
6 limit the number of people that would be coming into the
7 courtroom -- courthouse for that matter.

8 We're providing everybody the opportunity to watch
9 this by Zoom, so any spectators, to the extent you have
10 anybody else who wants to pop in, this will be just like an
11 open courtroom. They can request a link by Zoom. We've got
12 the capacity to give them access, and that's how I would
13 prefer to handle it, rather than have a whole bunch more
14 people.

15 The COVID numbers in San Antonio are looking very
16 encouraging right now. But you know, who is to say that we
17 don't start seeing an uptick again, and so I prefer to
18 limit --

19 MR. ALSAFFAR: Understood.

20 THE COURT: Anything else we need to take up today?

21 MR. STERN: Couple more questions, Your Honor.

22 First, what is the start time each day?

23 THE COURT: 9:00.

24 MR. STERN: In your last pretrial order you suggested
25 that you were going to let the parties know the amount of time

1 they would have for closing argument.

2 THE COURT: Yeah. So we're a couple weeks away, so
3 let's talk about that later down the road.

4 MR. STERN: Sure. Could I ask your forbearance, I
5 just sort of touched down in San Antonio. I'm still trying to
6 get my bearings. Can I put you on hold for a moment and ask
7 the people around me if they have any technological problems
8 or concerns that I might not have touched on yet?

9 THE COURT: That's fine.

10 MR. STERN: Thank you, sir. I appreciate it.

11 *(Pause in proceedings)*

12 MR. STERN: There was one last concern and that was
13 the prospect of someone other than the Court recording through
14 Zoom. We were wondering how Your Honor is going to handle
15 that issue.

16 THE COURT: So that's always an issue. I'm going to
17 need to talk to our IT staff about that. That always poses a
18 concern in any Zoom proceeding. I'm going to have to work on
19 that.

20 MR. STERN: Fair enough. Thank you, your Honor.
21 That's all we have.

22 THE COURT: Anything else, Mr. Alsaffar?

23 MR. ALSAFFAR: And I apologize. I had one question
24 about the end time of the day, since Mr. Stern asked the right
25 question about the start time. And do you have an anticipated

1 end time that you would like for us to hit?

2 THE COURT: Yeah. So generally what I do is, and we
3 don't have a jury here, and so you guys are going to have to
4 remind me every once in a while if you-all need a break.

5 If this was a jury trial, we would start at 9. I
6 would probably have a little quick break at 10:30 for
7 everybody to go to the bathroom, come back, break somewhere
8 about 12-ish depending on where the witness testimony is.

9 There is unfortunately really only one place to eat
10 around here. It's very good, Commonwealth. It's very slow,
11 and so you might want to take that into account for food
12 purposes.

13 I generally try to give us like 45 minutes or an hour
14 to grab something, and then we would reconvene somewhere about
15 1-ish. Again, if someone needs a bathroom break, quick break
16 3:15 to 3:30ish, and push to about 5 or 5:30.

17 But again, like always, if it looks like we can
18 finish up a witness, I would prefer to finish up a witness
19 before calling it a day. So if it means pushing until 6 or so
20 knowing that we can finish the witness, I do that.

21 That's my general routine.

22 MR. ALSAFFAR: Thank you, Your Honor. That's very
23 helpful.

24 THE COURT: Anything else, Mr. Alsaffar?

25 MR. ALSAFFAR: Sorry. I didn't mean to interrupt

1 you. No, Your Honor.

2 THE COURT: Mr. Stern?

3 MR. STERN: No, Your Honor.

4 THE COURT: Okay. Good enough. We will see you. I
5 look forward to seeing the exhibits tomorrow and then we will
6 see you-all on the 7th.

7 MR. ALSAFFAR: Thank you, Your Honor.

8 MR. STERN: Thank you, sir.

9 *(Concludes proceedings)*

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11 I certify that the foregoing is a correct transcript from
12 the record of proceedings in the above-entitled matter. I
13 further certify that the transcript fees and format comply
14 with those prescribed by the Court and the Judicial Conference
15 of the United States.

16
17 Date: 07/18/22

/s/ *Gigi Simcox*
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